

**Letter of Findings Number: 10-0270P
Individual Income Tax
For Tax Year 2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are a non-resident married couple. The Indiana Department of Revenue ("Department") issued proposed assessments for a ten percent negligence penalty and interest for the tax year 2008. Taxpayers do not protest the interest, but do protest the imposition of negligence penalty. Taxpayers did not request a hearing. The Letter of Findings was written based on the materials in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of ten percent negligence penalty related to late filing for the tax year 2008. Taxpayers insist that they acted in good faith regarding their Indiana tax duties and that the circumstances which resulted in income tax assessments were beyond their control. Taxpayers received additional capital gains for the tax year 2008, but were not informed of those gains until after the April 15, 2009, filing date. Taxpayers believe that this factor is sufficient to warrant waiver of penalty.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

The Department's liability notice explains that Taxpayers did not remit the full amount due for 2008 until after the filing date. After reviewing the circumstances which resulted in the additional income tax due for this audit period, the Department agrees with Taxpayers that they had reasonable cause, as provided by [45 IAC 15-11-2](#)(c). The negligence penalty will be dismissed.

FINDING

Taxpayers' protest is sustained.

Posted: 09/01/2010 by Legislative Services Agency

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